

REGISTERED
SPEED POST



F.No. 372/2/DBK/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 30/4/14

Order No. 106/14-cus dated 30.04.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
243/Cus/DBK/Kol/13-Air dated 05-11-2013
passed by the Commissioner of Customs (Appeals),
Custom House, Kolkata.

Applicant : M/s. Shama Creation Pvt. Ltd.,
33C, Topsia Road, Kolkata-700039.

Respondent : Commissioner of Customs,
Custom House, Kolkata.

ORDER

This revision application is filed by applicant M/s. Shama Creation Pvt. Ltd., 33C, Topsia Road, Kolkata against the Order-in-Appeal No. 243/Cus/DBK/Kol/13-Air dated 05-11-2013 passed by the Commissioner of Customs (Appeals), Kolkata with respect to Order-in-Original No. 218/DBK/12 dated 19/04/2012 passed by the Assistant Commissioner of Customs (Drawback), Kolkata

2. Brief facts of the case are that the applicant had filed 2 shipping Bills viz. 5533207 dt. 17-02-2009 and 5540296 dt. 24-03-2009 under the Drawback Scheme and after completion of export they were paid the appropriate drawback amount. Thereafter, based on the Export outstanding Statement statement given by the Reserve Bank of India, regarding non-realisation of export proceeds, a demand notice under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 was issued on 20-04-2011, asking the applicant to pay the demanded amount within 30 days of receipt of the notice. Personal hearing was also granted to the applicant. But, the applicant failed to appear for personal hearing. The demand was confirmed vide KOL/CUS/AC/218/DBK/2012 dt. 19-04-2012. The Order-in-Original was not received by the applicant. Furthermore, one Detention Notice No. S34M-73/2011 DBK dt. 25-10-2012 under section 142 (1) (a) (b) of the Customs Act, 1962 was served on the applicant by Assistant Commissioner of Customs, Special Tax Recovery Cell (Port), Customs House, Kolkata for detaining and selling any goods of the applicant and deducting the amount along with applicable interest. Again on 14-12-2012, a notice of demand bearing F.No. S40-86/2012-STRC (Port) dated 14-12-2012 was received by the applicant.

3. Being aggrieved by the said detention notice dated 25-10-2012 applicant filed appeal on 07-01-2013 before Commissioner (Appeals), who rejected the same as time barred and on merits also.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The Commissioner of Customs (Appeals) Customs House, Kolkata is not justified in rejecting the appeal on the ground of delay in filing appeal.

4.2 The applicant submitted the appeal on 07-01-2013 at the office of the Commissioner of Customs (Appeals) Customs House, Kolkata against the Notice S40-86/2012 STRL (Port) dated 14-12-2012 issued by the Assistant Commissioner of Customs, Special Tax Recovery Cell (Port) Customs House, Kolkata of the appeal filed to the Commissioner of Customs (Appeals), Customs House, Kolkata i.e. well within time limit of 60 days.

4.3 The applicant submitted the Bank Realisation Certificate vide our letter dated 20-06-2012 against the exports made against the shipping bills Nos (i) 5533207 dt. 17-02-2009 and (ii) 5590296 dt. 24-03-2009, on receipt of the same from the Bank.

4.4 The delay in receipt of the export remittance was due to recession in USA and closure of the dealing bank of USA-which is beyond the control of the applicant.

4.5 The applicant has been victimised due to failure of the bank to intimate Reserve Bank of India regarding the realization of foreign remittance as the Customs Department has initiated action on the basis of the information of the Reserve Bank of India.

4.6 The copy of Bank Realisation Certificate has been submitted to the Reserve Bank of India, Kolkata for their perusal and condonation of delay in receipt of the export proceeds as the Customs Department has initiated action on the basis of R.B.I information. Copies of letters and enclosed and marked as Annexure-P5.

4.7 The orders passed by the Commissioner of Customs (Appeals, Customs House, Kolkata and the orders dated 19-04-2012 of the Assistant Commissioner of Customs department, Drawback department, Customs House, Kolkata and Detention Notice passed by the Assistant Commissioner of Customs, Drawback department as well as the order of Assistant Commissioner of Customs, Tax Recovery Cell (Port) may kindly be set aside and allow the applicant to carry on export business early.

5. Personal hearing scheduled in this case 27-03-2014 at Kolkata was attended by Shri P.D.Roy, Consultant on behalf of the applicant who reiterated the grounds of Revision Application. Shri Mohan Singh Dorai AC Customs (DBK) Customs House Kolkata attended hearing on behalf of respondent department who requested to uphold the impugned Order-in-Appeal.

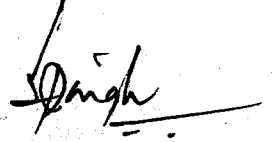
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that in this case applicant had filed appeal against detention notice dated 25-10-2012 which was issued to enforce the recovery of demand confirmed vide Order-in-Original No. 218/12 dt. 19-04-2012. The recovery proceedings initiated vide detention notice dated 25-10-2012 are in terms of provisions of section 142 (1) (a) (b) of Customs Act, 1962 and the same are legal and proper. As such Commissioner (Appeals) has rightly rejected the appeal against said detention notice. However, applicant has claimed that he had not received the Order-in-Original No. 218/12 dt. 19-04-2012. He was required to file appeal against said Order-in-Original dt. 19-04-2012 by producing evidence of its non receipt so as to address time limitation provision of section 128 of Customs Act. Applicant has failed to avail appellate remedy against said Order-in-Original.

8. In view of above position, Government do not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same.

9. The revision application is rejected being devoid of merits.

10. So, Ordered.



(D.P. Singh)
Joint Secretary to the Govt. of India

M/s. Shama Creation Pvt. Ltd.,
33C, Topsia Road, Kolkata-700039.

(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Officer
वित्त मंत्रालय (राजस्व) / Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 106 /14-Cus Dated 30.04.2014

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Assistant Commissioner of Customs, Drawback Department, Custom House, Kolkata.
4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(Nirjala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी / NIRJALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
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